HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 1017 OF 2006

1. Abid Ali, S/o Hamid Ali,
2. Shamsher @ Bablu S/o Abid Ali,
   Both are R/o Mohalla Pakkakot,
   P.S. Kashipur, Distrit-Udham Singh Nagar.
3. Mohd. Hanif, S/o Allah Baksh,
   R/o Mohalla-Ali Khan, P.S. Kashipur,
   District-Udham Singh Nagar. .....Applicants.

Vs.

1. State of Uttaranchal.
2. Gurmeet Singh, S/o Suren Singh,
   R/o Pakka Kot, P.S. -Kashipur,
   District-Udham Singh Nagar. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Anurag Bisaria, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicants have prayed for quashing the charge-sheet dated 25.10.2005 as well as the proceedings of Criminal Case No. 2081/ 05 "State Vs. Abid and Ors" under Section 147, 148, 452, 323, 504, 506 I.P.C. pending in the Court of Judicial Magistrate-Kashipur, Udham Singh Nagar. Further prayer has been made for staying further proceedings of Criminal Case No. 2081/05 State Vs. Abid and Ors under Section 147, 148, 452, 323, 504 & 506 I.P.C. pending in the Court of Judicial Magistrate, Kashipur, Udham Singh Nagar.

3. Briefly stated, an F.I.R. was lodged on 10.10.2005 at about 23:10 hrs under Section 147, 148, 452, 323, 504 & 506 I.P.C. Thana Kashipur, District-Udham Singh Nagar, which was registered as Case Crime No. 2905 of 2005. The names of all the applicants have been shown in the F.I.R. alleging that they all armed with fatal weapons entered into the house of the complaint, beaten the complaint and threatened the complainant with dire consequences in case hw does not vacate the house.

4. Counsel for the applicants has submitted that the dispute is among the tenant-Gurmit Singh and Sri Laxmi Narayan, who is the landlord as will appear from the F.I.R. to the following effect:-

"मुझे संदेह है कि इसमें मकान मालिक लक्ष्मी नारायण का हाथ है। महोदय मेरी रिपोर्ट लिखकर कानूनी कार्यवाही करने की कृपा की जाये।"

5. Further it has been submitted that on the verbal notice given by the landlord Laxmi Narayan for vacating the rented premises, Gurmit Singh threatened him and also demanded Rs. 50,000/- towards the amount spent by him.

6. The applicants have alleged to have intervened in the matter. However FIR was lodged against the applicants by Sri Gurmit Singh on 10.10.2005.

7. Aggrieved by the said lodging of the FIR, the applicants approached this Court by moving Writ Petition

No. 1173/2005 (MB). The Court was pleased to grant interim relief to the following effect:

> "*Heard Smt. Pusha Joshi learned counsel for the petitioners and Sri D.K. Sharma learned GA for the State.*
>
> *Admit.*
>
> *Learned GA prays for and is granted four weeks time to file counter affidavit. Issue Notice to the respondent No. 4 and put up thereafter.*
>
> *Meanwhile, the petitioners shall cooperate in investigation. However, no coercive measure shall be initiated against them for their arrest in case crime No. 2905 of 2005, P.S. Kashipur, District-Udham Singh Nagar, Under Section 147, 148, 452, 323, 504 and 506 of I.P.C."*

8. Counsel for the applicants have submitted that the police has submitted the charge-sheet on 25.10.2005 without proper investigation. The influence of the Advocate-Gurmit Singh on the police is so strong that on the FIR dated 10.10.2005, police has concluded the investigation and submitted the charge-sheet on 25.10.2005 (i.e. in just 15 days).

9. Counsel for the applicants have further submitted that the charge sheet does not contain the name of the Laxmi Narayan although specifically named in the F.I.R., who is the only and real offender of the said incident taken place on 10.10.2005.

10. Thereafter, the Magistrate has registered the Criminal Case No. 2081 of 2005 in the Court of Judicial

Magistrate-Kashipur (U.S. Nagar) on the basis of the charge-sheet. The applicants were directed to appear.

11. The applicants have submitted that they have complained to the concerned SSP on 13.11.2006 about the threatening being given to them by the Advocate Sri Gurmit Singh.

12. Without entering into the merits of the controversy, since the charge-sheet has been accepted on the basis of the F.I.R., therefore, there is no occasion to short-circuit the trial in view of ***Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. (2000) 3 SCC 269,*** where it has been held as under:-

> "*19. Considering the factual aspect of the matter we unhesitatantly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the High Court and resotre the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion off ours."*

13. Applicants are apprehending that the complaint shall delay the proceedings of their bail. Apprehension is misconceived.

14. In view of the above, on the surrender of the applicant before the concerned Magistrate, he is directed

To expedite their release without any delay on their personal bonds as well as sureties to the satisfaction of the Magistrate concerned for their regular appearance in the case.

15. Subject to aforesaid with regard to expediting the release of the applicant, application filed under Section 482 of the Code of Criminal Procedure lacks merit and is dismissed.

(Rajesh Tandon, J.)

12.12.2006
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